

U.S. Serial No. 10/613,689

Filed: July 3, 2003

AMENDMENT AND RESPONSE

Remarks

Claims 1-16 are pending in the present application. Claims 1-16 have been rejected in the Final Office Action mailed June 14, 2005.

Summary of the Amendments

With the present amendments to claims 1 and 10, Applicant believes that claims 1 and 10 more clearly recite the subject matter that Applicant most recently argued distinguished the present invention from the prior art of record. Those arguments are presented in the Amendment and Response dated December 30, 2004 and are fully incorporated by reference.

More specifically, the Final Office Action asserts the unamended claims "do not recite what applicant contends, such as, 'from a direction substantially perpendicular' does not recite that this refers to the direction of travel of the packaging material upstream from the feed means." It is believed that with the present amendment the claims fully distinguish the present invention from the known art.

Following this response, claims 1-16 remain in the application. Examination and approval of the present application is respectfully requested in light of the foregoing amendment and in view of the present remarks.

Official Notice under MPEP § 2144.03

The Office Action mailed June 14, 2005 (Final Office Action) asserts that in the previous Office Action mailed September 30, 2004 (Non-final Office Action) "[a] 103

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rejection was based upon claim 13 which was not challenged by applicant." Surprised, Applicant understands this statement to mean Applicant did not respond to a rejection asserted in the Non-final Office Action. Respectfully, Applicant timely and fully responded to each and every claim rejection set forth in the Non-final Office Action, whether asserted positively or in the alternative.

Applicant acknowledges the Non-final Office Action states, "[r]egarding claim 13, examiner takes official notice that the claimed control means are well known in the art." However, Applicant does not agree that such a statement was a basis for a claim rejection. Claim 13 does not nor has it ever included the limitation "control means". Accordingly, Applicant reasonably understood the plain meaning of the official notice sentence to be directed to the controller comprising a central processor, one of the several limitations listed in claim 13. Because controllers with central processors are indeed known, it seemed reasonable to Applicant not to needlessly argue with the Examiner over an acknowledgement that one of the claim limitations, of and by itself, is known in the art. Such an argument would not, in Applicant's view, be a good faith effort to move the application to allowance.

Official notice is permitted only to facts "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). Because the subject matter of claim 13 is not a fact capable of such instant and unquestionable proof, official notice can not reasonably be a basis for a 103 rejection directed to claim 13. Nevertheless, Applicant reads the Final Office Action to assert that a failure to traverse the official notice has given rise to a 103 rejection directed to claim 13. As Applicant can find no basis in the law for such a

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proposition, it is quite possible that Applicant simply misunderstands the Examiner's statement and invites the Examiner to instruct the Applicant as to the meaning and implication of the present official notice. Meanwhile, Applicant presents these new arguments to traverse the official notice until it is made clear exactly which limitation the term "control means" is directed to and the result vis-à-vis a rejection to claim 13.

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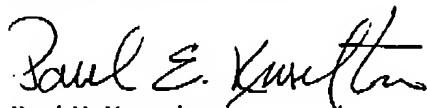
Conclusion

After entry of the present amendment, claims 1-16 are pending. A Request for Continued Examination is being filed together with this Submission. Applicant respectfully submits that entry of the amendment will place the present application in condition for allowance. Applicant also respectfully submits that in light of the foregoing remarks and previous arguments, the rejections are improper and requests that they be withdrawn.

Applicant thanks Examiner Kim for his consideration of the present amendment and remarks. Should Examiner Kim have any questions or concerns he is respectfully requested to contact the undersigned at the telephone number listed below. Otherwise, Applicant respectfully requests the present application be allowed and a Notice of Allowance issue.

Applicants believe that no additional fees are due for this amendment beyond what is concurrently paid. However, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 503447.

Respectfully submitted,



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Dated: September 14, 2005

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Attorney Docket No.: D-7871